JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

No. 1335

EZRA PARKS,

Petitioner,

v.

SIMPSON TIMBER COMPANY, a corporation, and GRACE LINE, INC., a corporation,

Respondents.

RESPONDENT SIMPSON TIMBER COMPANY'S SUPPLEMENTAL PETITION FOR REHEARING ON ORDER GRANTING PETITION FOR WRIT OF CERTIORARI AND SUMMARILY GRANTING JUDGMENT

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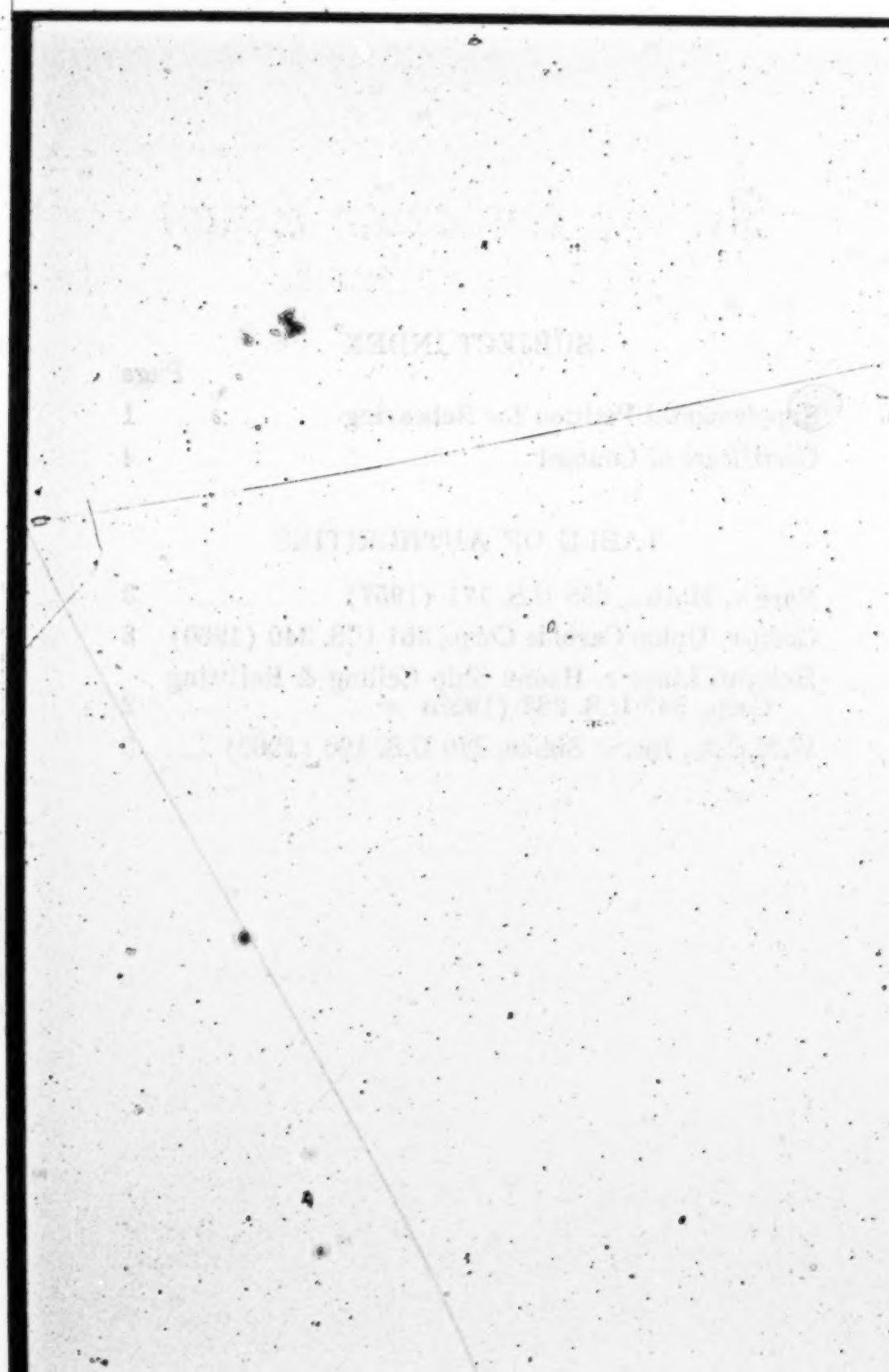
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SUPPLEMENTAL PETITION FOR REHEARING

Respondent Simpson Timber Company respectfully submits its supplemental petition for rehearing.

Respondent Simpson Timber Company respectfully prays that this Court grant rehearing on its order of June 12, 1967, granting petition for Writ of Certiorari and Reversing Judgment. Respondent

prays that this Court deny the petition for Writ of Certiorari, or, in the alternative, permit the Writ to issue to review the judgment of the Court of Appeals for the Ninth Circuit on the merits with the right of Respondent Simpson Timber Company to brief all issues and present oral argument thereon.

In the alternative, if this Court denies such petition, Respondent Simpson Timber Company respectfully prays that this Court remand the cause to the United States Court of Appeals for the Ninth Circuit for that court's determination of the numerous legal issues presented but not ruled upon including:

1. The lower court required respondent to fully indemnify the other respondent Grace Line, Inc., despite the ruling of this Court in *Halcyon Lines* v. *Haenn Ship Ceiling & Refitting Corp.*, 342 U.S. 282 (1952), which decision held that there could be no indemnification between several defendants in this type of action. By this Court's reversal the District Court's ruling is reinstated making respondent Simpson totally liable for an $80,000 judgment, despite the fact that this liability contravenes a decision of this Court; this issue, although clearly presented to the Ninth Circuit Court of Appeals was not decided by that court, the court having reversed upon other grounds.

2. The verdict was grossly excessive, amounting to $80,000 in a personal injury action where petitioner sustained minor injuries and incurred approxi-

mately $76 in medical expenses. This issue was not considered on rehearing by the Ninth Circuit Court of Appeals.

3. The award greatly exceeded the ad damnum clause and a remittitur should have been ordered. This issue was not considered by the Ninth Circuit Court of Appeals.

4. The District Court failed to grant a mistrial despite clearly erroneous and highly prejudicial remarks by plaintiff's attorney made to the jury on opening statement to the effect that this respondent Simpson had altered its methods of packaging subsequent to the accident. This issue was not consfdered by the Court of Appeals.

5. Erroneous testimony was admitted by the District Court. These issues were not ruled upon by the Court of Appeals.

In support of its supplemental and alternative requests, respondent Simpson relies upon: *Barr* v. *Matteo*, 355 U.S. 171 (1957); *Goett* v. *Union Carbide Corp.*, 361 U.S. 340 (1960); *W.M.C.A., Inc.*, v. *Simon*, 370 U.S. 190 (1962).

Respectfully submitted,

KENNETH E. ROBERTS
Attorney for Respondent
Simpson Timber Company

CERTIFICATE OF COUNSEL

I hereby certify the foregoing supplemental petition for rehearing is presented in good faith and not for delay and is restricted to grounds as specified in Rule 58, Supreme Court of the United States.

KENNETH E. ROBERTS
Attorney for Respondent

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

PARKS *v.* SIMPSON TIMBER CO. ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 1335. Decided June 12, 1967.

PER CURIAM.

The petition for a writ of certiorari is granted and the judgment is reversed. *Albanese v. N. V. Nederl. Amerik Stoomv. MAATS.*, 382 U. S. 283, at 283.

MR. JUSTICE HARLAN and MR. JUSTICE STEWART are of the opinion that certiorari should be denied.